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DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement Open Season

AGENCY: Maritime Administration, Department of Transportation

ACTION: Notice of open season for enrollment in the VISA program

SUMMARY: The Maritime Administration (MARAD) announces that the open season for Fiscal Year 2017 applications for participation in the Voluntary Intermodal Sealift Agreement (VISA) program will run for 30 days beginning today and ending [**insert date 30 days after date of publication in the Federal Register**]. The purpose of this notice is to invite interested, qualified U.S.-flag vessel operators that are not currently enrolled in the VISA program to apply. This is the only planned enrollment period for carriers to join the VISA program and derive benefits for Department of Defense (DOD) peacetime contracts initiated during the period from October 1, 2016, through September 30, 2017.

Any U.S.-flag vessel operator organized under the laws of a state of the United States, or the District of Columbia, who is able and willing to commit militarily useful sealift assets and assume the related consequential risks of commercial disruption, may be eligible to participate in the VISA program.

The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including access to vessels, vessel space, intermodal systems and equipment, terminal facilities, and related management services, to the Department of Defense (DOD), as necessary, to meet national defense contingency requirements or national emergencies. Carriers enrolled in the VISA program provide DOD with assured access to such services during contingencies. In return

for their VISA commitment, DOD gives VISA participants priority for carriage of peacetime cargos.

DATES: VISA Program applications must be received on or before [**insert date 30 days after date of publication in the Federal Register**].

ADDRESSES: Submit applications and questions related to this notice to William G. McDonald, Director, Office of Sealift Support, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: William G. McDonald, Director, Office of Sealift Support, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590. Telephone (202) 366-0688; Fax (202) 366-5904, electronic mail to william.g.mcdonald@dot.gov or visit <http://www.marad.dot.gov>.

SUPPLEMENTARY INFORMATION: The VISA program was established pursuant to Section 708 of the Defense Production Act of 1950, as amended (DPA). The VISA program was created to provide for voluntary agreements for emergency preparedness programs. Pursuant to the DPA, voluntary agreements for preparedness programs, including the VISA program expire five (5) years after the date they became effective.

The VISA program is open to U.S.-flag vessel operators of oceangoing militarily useful vessels. An operator is defined as an owner or bareboat charterer of a vessel. Operators include vessel owners and bareboat charter operators if satisfactory signed agreements are in place committing the assets of the owner to VISA. Voyage and space charterers are not considered U.S.-flag vessel operators for purposes of VISA eligibility.

VISA Program

The VISA program provides for the staged, time-phased availability of participants' shipping services/systems through pre-negotiated contracts between the Government and participants. Such arrangements are jointly planned with the MARAD, the United States Transportation Command (USTRANSCOM), and participants in peacetime to allow effective and best valued use of commercial sealift capacity, provide DOD assured contingency access, and to minimize commercial disruption.

Throughout the activation of any stages of VISA, DOD may utilize voluntary commitment of sealift capacity or systems. Requests for volunteer capacity will be extended simultaneously to both participants and other carriers. First priority for utilization will be given to participants who have signed Stage I and/or Stage II contracts and are capable of meeting the operational requirements. Participants providing voluntary capacity may request USTRANSCOM to activate their pre-negotiated contingency contracts. To the maximum extent possible, USTRANSCOM, where appropriate, shall support such requests. Volunteered capacity will be credited against participants' staged commitments, in the event such stages are subsequently activated.

There are three time-phased stages in the event of VISA activation. VISA Stages I and II provide for pre-negotiated contracts between DOD and participants to provide sealift capacity to meet all projected DOD contingency requirements. These contracts are executed in accordance with approved DOD contracting methodologies. VISA Stage III provides for additional capacity to DOD when Stages I and II commitments or volunteered capacity are insufficient to meet contingency requirements, and adequate shipping services from non-participants are not available through established DOD contracting practices or U.S. Government treaty agreements.

Exceptions to this Open Season

The only exception to this open season period for VISA enrollment will be for a non-VISA carrier that reflags a vessel into U.S. registry. That carrier may submit an application to participate in the VISA program at any time upon completion of reflagging.

Advantages of Peacetime Participation

In return for their VISA commitment, DOD awards peacetime cargo contracts to VISA participants on a priority basis. Award of DOD cargoes to meet DOD peacetime and contingency requirements is made on the basis of the following priorities: U.S.-flag vessel capacity operated by VISA participants and U.S.-flag Vessel Sharing Agreement (VSA) capacity held by VISA participants; U.S.-flag vessel capacity operated by non-participants; Combination U.S.-flag/foreign-flag vessel capacity operated by VISA participants, and combination U.S.-flag/foreign-flag VSA capacity held by VISA participants; Combination U.S.-flag/foreign-flag vessel capacity operated by non-participants; U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by VISA participants; U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by non-participants; and Foreign-owned or operated foreign-flag vessel capacity of non-participants.

Participation

Applicants must provide satisfactory evidence that the vessels being committed to the VISA program are operational and are intended to be operated by the applicant in the carriage of commercial or government preference cargoes. Operator is defined as an ocean common carrier or contract carrier that owns, controls or manages vessels by which ocean transportation is provided.

While vessel brokers, freight forwarders, and agents play an important role as a conduit to locate and secure appropriate vessels for the carriage of DOD cargo, they are not eligible to participate in the VISA program due to lack of requisite vessel ownership or operation.

Commitment

Any U.S.-flag vessel operator desiring to receive priority consideration for DOD peacetime contracts must enroll their entire U.S.-flag militarily useful capacity and associated services in the VISA program and commit no less than 50 percent of its total U.S.-flag capacity in Stage III of the VISA program. Participants operating vessels in international trade may receive top tier consideration in the award of DOD peacetime contracts by committing the minimum percentages of capacity to all three stages of VISA (Stage I – 15%, Stage II – 40%, Stage III – 50%) or bottom tier consideration by committing the minimum percentage (50%) of capacity to only Stage III of VISA. USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse national economic impact. To minimize domestic commercial disruption, participants operating vessels exclusively in the domestic coastwise trades (Jones Act) are not required to commit the capacity of those U.S. domestic trading vessels to VISA Stages I and II but will be required to commit 50% of that capacity in Stage III. Overall VISA commitment requirements are based on annual enrollment.

In order to protect a U.S.-flag vessel operator's market share during contingency activation, VISA allows participants to join with other vessel operators in Carrier Coordination Agreements (CCAs) to satisfy commercial or DOD requirements. VISA provides a defense against antitrust laws in accordance with the DPA. CCAs must be submitted to the MARAD for coordination with the Department of Justice for approval, before they can be utilized.

Vessel Position Reporting

If VISA applicants have the capability to track their vessels, they must include the tracking system used in their VISA application. Such applicants are required to provide MARAD access to their vessel tracking systems upon approval of their VISA application. If VISA applicants do not have a tracking system, they must indicate this in their VISA application. The VISA program requires enrolled ships to comply with 46 CFR Part 307, Establishment of Mandatory Position Reporting System for Vessels.

Compensation

In addition to receiving priority in the award of DOD peacetime cargo, a participant will receive compensation during contingency activation for that capacity activated under Stage I, II and III. The amount of compensation will depend on the Stage at which capacity is activated. During enrollment, each participant must select one of several compensation methodologies. The compensation methodology selection will be completed with USTRANSCOM resulting in prices in contingency contracts between DOD and the participant. Participants providing voluntary capacity may request USTRANSCOM to activate their pre-negotiated contingency contracts; to the maximum extent possible, USTRANSCOM, where appropriate, will support such requests. Volunteered capacity will be credited against participants' staged commitments, in the event such stages are subsequently activated.

Security Clearances

All VISA applicants accepted for participation not having a Facility Security Clearance (FCL) will be required to pursue the facility clearance process with the Defense Security Service (DSS) within 45 days. If the accepted applicant does not have a facility clearance, MARAD will

initiate the clearance process with DSS. Participants must have a FCL and a key representative of the company must have an individual security clearance, at a minimum of SECRET level, in order for them to participate in the VISA Joint Planning Advisory Group (JPAG) meetings and to meet VISA contingency contract obligations. One of the objectives of the JPAG is to provide the USTRANSCOM, MARAD and VISA participants with a planning forum to analyze DOD contingency sealift/intermodal service and resource requirements against industry commitments. JPAG meetings are often SECRET classified sessions. Eligibility for VISA participation will be terminated if a key representative does not have a clearance, an applicant is rejected for a facility clearance by DSS, or the applicant fails to complete the clearance process in a timely manner.

Application for VISA Participation

New applicants may apply to participate by obtaining a VISA application package (Form MA-1020 (OMB Approval No. 2133-0532)) from the Director, Office of Sealift Support. Form MA-1020 includes instructions for completing and submitting the application, blank VISA Application forms and a request for information regarding the operations and U.S. citizenship of the applicant company. A copy of the VISA document as published in the Federal Register on October 29, 2014 will also be provided with the package. This information is needed in order to assist MARAD in making a determination of the applicant's eligibility. An applicant company must provide an affidavit that demonstrates that the company is qualified to document a vessel under 46 U.S.C. § 12103, and that it owns, or bareboat charters and controls, oceangoing, militarily useful vessel(s) for purposes of committing assets to the VISA program.

New VISA applicants are required to submit their applications for the VISA program as described in this Notice no later than 30 days after the date of publication of this Federal Register notice. Applicants must provide the following: U.S. citizenship documentation; Copy of their

Articles of Incorporation and/or By Laws; Copies of loadline documents from a recognized classification society to validate oceangoing vessel capability; U.S. Coast Guard Certificates of Documentation for all vessels in their fleet; Copy of Bareboat Charters, if applicable, valid through the period of enrollment, which state that the owner will not interfere with the charterer's obligation to commit chartered vessel(s) to the VISA program for the duration of the charter; and Copy of Time Charters, valid through the period of enrollment for tug services if sufficient tug service is not owned or bareboat chartered by the barge operator. Tug/Barge operators must provide evidence to MARAD that tug service of sufficient horsepower will be available for all barges enrolled in the VISA program.

Once MARAD has reviewed the application and determined VISA eligibility, MARAD will sign the VISA application document which completes the eligibility phase of the VISA enrollment process. Approved VISA participants will be responsible for ensuring that information submitted with their application remains up to date after the approval process. If charter agreements are due to expire, participants must provide MARAD with charters that extend the charter duration for another 12 months or longer.

After VISA eligibility is approved by MARAD, approved applicants are required to execute a VISA Contingency Contract with the USTRANSCOM in a timely manner. The USTRANSCOM VISA Contingency Contract will specify the following: Participant's Stage III commitment, and appropriate Stage I and/or II commitments for the period October 1, 2016 through September 30, 2017; Drytime Contingency terms and conditions; and Liner Contingency terms and conditions, if applicable. If any change is expected in the Contractor's U.S. flag fleet during the period of the applicable VISA Contingency Contract, a minimum 30-day notice shall be provided to MARAD

and USTRANSCOM identifying the change and to alter the VISA Capacity Commitment indicated on Attachment 1 of the VISA Contingency Contract.

Execution of the USTRANSCOM VISA Contingency Contract completes the enrollment process and establishes the approved applicant as a VISA Participant. The Maritime Administration reserves the right to revalidate all eligibility requirements without notice. USTRANSCOM reserves the right to revalidate eligibility for VISA priority for DOD business at any time without notice.

(Authority: 49 CFR Sections 1.92 and 1.93)

By Order of the Maritime Administrator:

Date: July 25, 2016

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration

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